## REMARKS

### Claim Rejections 35 U.S.C., Section 102

The Examiner has rejected claims 1-3 under 35 U.S.C., Section 102(b) as anticipated by Dvoracek.

The Examiner states that:

> Dvoracek teaches a lid 10 having an annular clamp comprising an outer lip (unnumbered downwardly extending portion spaced radially inwardly from lip 28) to receive and "capture" the rim of a cup, a spout 24 extending upwardly form a top of the clamp to a discharge port 26 at an apex thereof and being entirely above the clamp, the inner wall of the clamp and an inner wall of the spout converging smoothly to the discharge port (see figure 3).

Applicant submits that Dvoracek does not have an annular clamp and does not have inner and outer lips which grip the inner and outer walls of the lip of a cup.

1. No Clamp: Clamps compress an item held within their grip. This is what is claimed by applicant. Dvoracek teaches no clamp and does not operate as a clamp. Even the Examiner has refrained from using the claim word "grip" and has used the word "capture" found in Dvoracek's description of how that device works. Dvoracek is a lid for a metal beverage container. It has a skirt 28 for interlocking the lid 10 to a ridge 32, the ridge 32 said to be invariably formed by the crimping of the body 16 to the top 14 of the can 12 (Col.3, Ln.60-65). Dvoracek's "interlocking" is not applicant's "clamping," as is evident from the further description given by Dvoracek. Dvoracek teaches that the inner surface of Dvoracek's skirt 28 is tapered from the top and the bottom so as to form a narrowest diameter at about the mid elevation of the skirt 28 (Col.3, Ln.68 – Col.4, Ln.5). The bottom wide diameter portion across the skirt or mouth 38 is wider than the diameter across the outer edges of the ridge 32. Above the mid elevation point the diameter increases again to a diameter that exceeds the diameter of the ridge 32. Consequently, the "geometry" is said to "capture" the ridge 32 with the encircling

skirt 28 (Col.4, Ln.5-13). Applicant's outer lip does not "capture" the cup in its diameter. Applicant's inner and outer lips grip the cup between them. Dvoracek's "inner lip," so designated by the Examiner and not so identified or referenced by Dvoracek, plays no part in Dvoracek's description of the operation of securing Dvoracek's lid to the ridge 32 of the metal can. Looking at Dvoracek's Figure 3, it is obvious that the skirt 28 "captures" the ridge 32 in its "geometry" because the skirt 28 surrounds the entire ridge and because the narrowest point on the skirt 28 extends under the ridge 32. In fact, Dvoracek's skirt 28 does not contact the container wall, but only "captures" the crimped ridge 32.

2. No Inner and Outer Gripping Lips

Dvoracek's skirt 28, as stated above, makes no contact whatsoever with the portion of the can extending below the ridge 32. Furthermore, what the Examiner has designated as an "inner lip" makes no contact with the wall of the can which is below the ridge 32. Thus, Dvoracek has no inner or outer lips which can grip the lip of a cup therebetween. In fact, Dvoracek does not even grip the ridge 32. Dvoracek merely "captures" it because of its "geometry." It surrounds but does not squeeze or compress the ridge so as to grip it.

**Claim Rejections –35 U.S.C. 103**

The Examiner rejects claims 2 and 3 under 35 U.S.C. 103 (a) as unpatentable over Dvoracek. The Examiner acknowledges that the spout of Dvoracek is not frustoconical. However, the Examiner further argues that such a modification is a mere change in shape. But the rejected claims require "a frustoconical spout extending upwardly from said rim." This claimed structure results in the smooth transition between applicants inner lip of the clamp converging with the inner wall of the spout at the rim of the cup and not above the rim of the cup. This maximizes the distance between the transition and the top of the spout and changes the flow patterns within the lid, both above and below the rim. Furthermore, a frustoconical spout

produces desirable flow results while other shapes do not necessarily do so. The choice of a "frustoconical" spout is not merely one of design but of resulting flow patterns.

**Additional Comments**

The patent to Dvoracek was issued in 1990 and is noted by the Examiner to be in Classification 220/713. This is the same classification searched by the Examiner prior to the Office Action dated July 3, 2000 which eventually led to the appeal in this case. Dvoracek appears less pertinent than the art earlier used by the Examiner. Dvoracek does not relate to a lid which is attached to a cup but to a can having a ridge which "invariably," says Dvoracek, results from crimping the top and side walls of the can. Dvoracek does not attach to the rim of a cup as claimed by applicants. There is nothing in Dvoracek to suggest such a use. There is no support for the Examiner's conclusion in the fair teachings of Dvoracek. In fact, Dvoracek's fair teachings of the manner of connection of the lid to the can are so contrary to applicants' teachings as to be less applicable than the Examiner's earlier references which were already rejected by the Board of Appeals as having no support based on fair teachings. The incorrect conclusions of the Examiner respecting Dvoracek are based on the impermissible use of applicant's claims as a roadmap.

As to the Examiner's argument regarding the frustoconical limitations of the claims being mere choices of shape, the claims have not changed since the appeal. Neither the Examiner nor the Board of Appeals earlier argued that it would have been obvious to one of ordinary skill in the art to make the spout of a frustoconical shape.

**CONCLUSION**

For the reasons above stated applicant respectfully submits that claims 1-3 are not anticipated by Dvoracek and that claims 2 and 3 are not unpatentable over Dvoracek.

It is understood there is no fee due at this time. However, should a fee deficiency have occurred, please charge Deposit Account No. 50-1971 per 37 C.F.R. § 1.25.

Enclosed please find Attorney's Change of Address.

Respectfully submitted,

1/16/04

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